IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2854 OF 2002

Hanumant Bandu Jagdale ... Petitioner

Versus

N.T.C. (M.N.) Ltd. and Ors. ... Respondents

Mr. P.M. Patel for Petitioner.
Ms. Nandini Menon for Respondent No. 1.

CORAM : F.I. REBELLO,J.
DATED : AUGUST 31, 2005

P.C.

. The Petitioner approached this court against the order dated 19.7.2002 of the Industrial Court, Mumbai in Complaint (ULP) No. 213 of 1996. The complaint as filed by the Petitioner has been dismissed on the ground that the Petitioner has not explained the delay and there is no supporting affidavit regarding delay caused. In so far as merits is concerned, the learned Judge in limine proceeded to hold that the complaint has himself failed to prove commission of unfair labour practice and accordingly dismissed the complaint. It is this order which is subject matter of the present petition.

. From the perusal of the complaint, it is clear that the Petitioner had invoked items 5 and 9 of Schedule IV of M.R.T.U. & P.U.L.P. Act, 1971. In Para 2 of the complaint, it is set out that unfair labour practice in which respondent is engaged in and continued to engage in is from 1.1.1996. The relief as prayed for was that respondents, their

servants, agents, officers, subordinates be directed to pay arrears of salary and other benefits with effect from 1.1.1996 onwards with interest thereon at the rate of 18% forthwith. In other words, in so far as relief is concerned, the prayer clause which proceeds on the footing that Petitioner is entitled to claim wages with effect from 1.1.1996. If that be considered, there will be no delay in preferring the complaint. The contention as urged on behalf of the Petitioner is that the claim is for unpaid wages on the basis that the Petitioner continues to be in employment and his services are not terminated. There would be recurring cause of action in so far as right to receive pay is concerned and as such the petitioner is restricting his claim as on 1.1.1996 and for period when complaint is filed i.e. 8.2.1996.

. On behalf of the Respondent, their learned counsel contends that considering the facts on record, the order need not be interfered with.

. I have heard learned counsel. There are two issues involved. One is as to whether the compliant is barred by limitation and secondly the complaint as filed can be maintainable or not. The second contention will have to be decided on merits

of the matter. The learned Tribunal has not proceeded to dispose of the complaint on merits but has proceeded on the footing that the petitioner herein has not been able to make out the case. That finding in the absence of giving opportunity to the Petitioner to lead evidence is clearly without jurisdiction.

. That leaves us with the main contention as to whether the Tribunal was right in dismissing the complaint being as barred by limitation. In so far as the complaint is concerned and relief sought for, the complaint would be within limitation. The claim is in respect of wages. The Petitioner claims wages from 1.1.1996. Whether he is entitled to claim wages or not is another aspect of the matter. On the pleadings as pleaded, the complaint as filed was maintainable and hence, could not have been dismissed on the ground that it is barred by limitation.

. In the light of that impugned order dated 19.7.2002 is set aside. The matter is remanded back to the Industrial Court for rehearing the matter on all issues other than point of limitation. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)